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April 26, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 9, 2004

Case Number: TSO-0109

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization (also called a security clearance). The local DOE security office declined to grant the individual a security clearance after it determined that information in its possession created substantial doubt about the individual's eligibility for an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, I have concluded that the individual's access authorization should be granted.

Background

The individual works for a contractor at a DOE facility where some assignments require an access authorization. The individual submitted a Questionnaire for Security Positions (QNSP) in April 2002. Because the information the local security office obtained during an interview with the individual on October 17, 2002, did not resolve concerns that the local security office had concerning her responses on the QNSP, the individual was sent for an interview with a DOE consultant psychiatrist on December 17, 2002. The DOE psychiatrist produced an evaluative report for the local security office on December 28, 2002, and information in that report led the office to interview the individual once again, on January 23, 2003. The local security office issued a Notification Letter to the individual on January 14, 2004. The Notification Letter alleges that DOE has substantial doubt about the individual's eligibility for a security clearance, based on disqualifying criteria set forth in section 710.8, paragraphs (f), (j), (k) and (l).

The Notification Letter alleges that the individual is a user of alcohol habitually to excess. See 10 C.F.R. § 710.8(j) (Criterion J). This charge is based on the DOE psychiatrist's evaluation of the individual. In his report, the DOE psychiatrist diagnosed the individual as having suffered from alcohol abuse as recently as 1997, without adequate evidence of rehabilitation or reformation. The DOE psychiatrist also stated in his report that the individual was drinking alcohol habitually to excess during 2001 and

2002, and had done so for a considerable period in the past. According to the DOE psychiatrist's report, the individual would need two years of sobriety, including 100 hours of attendance at Alcohols Anonymous meetings or 50 hours of professionally led substance abuse treatment, to provide adequate evidence of rehabilitation. In the absence of any organized treatment, the individual would need five years of sobriety to show adequate evidence of reformation. As additional evidence of drinking to excess, the individual admitted to the local security office in interviews that she was drinking to the point of intoxication as recently as December 24, 2002, and that she was arrested for driving while intoxicated in 1997.

The Notification Letter also alleges that the individual used illegal drugs, including marijuana, cocaine, ecstasy, LSC, mushrooms and Quaaludes, from 1989 to 2002. *See* 10 C.F.R. § 710.8(k) (Criterion K). According to the local security office, her most recent use of any illegal drug was consumption of cocaine on April 14, 2002. The Notification Letter further charges that the individual "deliberately misrepresented, falsified, or omitted significant information from a Questionnaire for National Security Positions, [or] a personnel security interview." *See* 10 C.F.R. § 710.8(f) (Criterion F). The local security office's evidence in support of this charge is that the individual failed to record her April 14, 2002 cocaine use on a Questionnaire for National Security Positions (QNSP) she signed on April 27, 2002, and failed to acknowledge it during a personnel security interview on October 17, 2002. Finally, the Notification Letter alleges that the individual "has engaged in unusual conduct or is subject to circumstances which tend to show that she is not honest, reliable, or trustworthy; or which furnishes reason to believe that she may be subject to pressure, coercion, exploitation or duress which may cause her to act contrary to the best interests of the national security." *See* 10 C.F.R. § 710.8(l) (Criterion L). The information that raised the local security office's concerns under this criterion is her failure to disclose her April 14, 2002 cocaine use, her presence at a bar that same day even though she maintained that she stopped frequenting bars in 1999; her 1997 DWI arrest; and her admission that she had driven an automobile 20 to 30 times while intoxicated.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing. The local security office transmitted the hearing request to the Office of Hearings and Appeals (OHA), and the Director of OHA appointed me as the Hearing Officer in this case. At the hearing I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual, who was represented by counsel, testified on her own behalf, and called three other witnesses: a psychiatrist, her supervisor and her sponsor at Alcohol Anonymous. The local security office submitted 10 written exhibits. The individual submitted a written answer to the Notification Letter and introduced five written exhibits.

Standard of Review

The applicable DOE regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of

access authorization will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In resolving questions about the individual’s eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual’s conduct. These factors are set out in section 710.7(c):

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 C.F.R. Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual’s eligibility for access authorization. A hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once DOE has presented derogatory information affecting an individual’s eligibility for access authorization, the individual must come forward with evidence to convince DOE that granting or restoring his or her access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” *See, e.g., Personnel Security Hearing*, Case No. TSO-0118, 29 DOE ¶ 82,771 at 85,616 (2004), and cases cited therein. In addition, any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security. 10 C.F.R. § 710.7(a). For the reasons discussed below, it is my opinion that the individual has resolved the security concerns described in the Notification Letter, and therefore her access authorization should be granted.

Findings of Fact

The individual did not dispute the allegations in the Notification Letter. She maintains, however, that she is now rehabilitated and reformed from alcohol abuse and no longer drinks alcohol or uses illegal drugs at all.

When DOE considered her eligibility for a clearance, the local security office was concerned that the individual had a long history of involvement with alcohol and illegal drugs. The individual related to the local security office that she began sneaking alcohol from her parents’ supply when she was 12 or 13 years old. Transcript of October 17, 2002 Personnel Security Interview, DOE Exhibit 3-2 (2002 PSI) at 18. She drank beer regularly throughout high school and beer, wine and mixed drinks since then, with occasional short periods of abstinence or reduced consumption, usually undertaken to conform to the people around her. *Id.* at 20-25. In 1997, after drinking five to seven drinks within an hour and a half, she was arrested for DWI, having failed a Breathalyzer test with a reading that indicated a blood alcohol content (BAC) of .22. *Id.* at 16

(recollection of individual); *cf.* DOE Ex. 1-5 (arrest report reflects test results of .20 and .19). In her twenties, she would commonly drink eight to ten drinks in four to five hours. Report of Psychiatrist, 12/28/2002, DOE Ex. 2-1 (Psych Report) at 19. At the time of the PSI and the psychiatric evaluation in late 2002, the individual stated that she drank three to five drinks on one occasion most weekends, and had been intoxicated at least four times in the preceding year. 2002 PSI at 25, 29-30; Psych Report at 20.

In her 2002 PSI, the individual stated that she began using marijuana on a daily basis in high school. 2002 PSI at 41. Similar to her pattern of drinking alcohol, her illegal drug use varied according to the patterns of the people surrounding her. *Id.* at 42-43. At age 25, she was introduced to ecstasy, which she used for about eight months before quitting. Following that period, the individual used various illegal drugs sporadically. *Id.* at 45-55, 71-74. She stated that her last marijuana uses were in the spring of 1999 and the summer of 2000. *Id.* at 56; Psych Report at 17. During her 2002 PSI, she reported that her last cocaine use was at a millennium party in 2000. 2002 PSI at 56. She admitted to the DOE psychiatrist, however, that she used cocaine one additional time, on April 14, 2002. A drug test performed on a sample of the individual's hair that the DOE psychiatrist obtained during the evaluation detected no drug use. Supplemental Report of DOE Psychiatrist, 1/7/2003, DOE Ex. 2-2. In light of the sample hair's length and the efficacy of the test, the DOE Psychiatrist interpreted the drug test result to mean that the individual had not used any illegal drugs habitually for the past 21 months. *Id.* at 1.

The discrepancy between the dates the individual reported as her last use of cocaine raised a new concern with the local security office, that she had not provided complete and honest responses during the local security office's investigation of her eligibility for access authorization. Consequently, the individual was interviewed again on January 23, 2003. During that interview, she was offered the opportunity to explain why she had not told the local security office about her most recent cocaine use on April 14, 2002. The individual explained that in celebration of completion of an academic program she drank four beers at a bar, met a gentleman, went to his apartment with him and snorted about five milligrams of cocaine. Transcript of January 23, 2003 Personnel Security Interview, DOE Exhibit 3-1 (2003 PSI) at 17-23. This incident occurred shortly after she had signed a certification, on March 27, 2002, containing the following statement: "I understand the use of alcohol habitually to excess and/or my involvement with any illegal drug activity will result in loss of my DOE access authorization." *Id.* at 26. Her explanations for using cocaine that day and for not reporting that use were inconsistent and evasive. She stated she was in the process of completing her QNSP; she had completed some sections in the weeks before April 14, 2002, but had other sections yet to complete. *Id.* at 15-16. In the interview, she contended that when she filled out the section of the QNSP related to drug use, she had correctly stated that her last use had been in 2000; by the time she signed the document, however, on April 27, 2002, that statement was no longer true, and she failed to correct it. *Id.* at 40-41. On the other hand, earlier in the interview, she stated, "I neglected to put it down [on the QNSP]. I don't know if it was on purpose or I simply forgot." *Id.* at 16. She stated that she had forgotten about the April 14, 2002 incident when she was questioned about her drug use during the 2002 PSI. *Id.* at 40. She also stated that she did not think she could lose her clearance for using cocaine until after her

access authorization was granted. *Id.* at 27, 44-45. On the other hand, she also stated in the course of the interview that she really had not given much thought to using cocaine that day; the opportunity presented itself and, her judgment impaired by four beers, she accepted. *Id.* at 41, 45.

Testimony of the Witnesses at the Hearing

The DOE Psychiatrist's First Appearance

Following the 2002 PSI, the local security office referred the individual to the DOE psychiatrist for evaluation. At the hearing, the DOE psychiatrist summarized his report as follows. During his December 17, 2002 evaluation of the individual, the DOE psychiatrist had found her to be honest and forthcoming. Transcript of Hearing (Tr.) at 13-14. He determined, however, that the individual minimized the extent of her historical involvement with alcohol and illegal drugs, understating to him the amounts she had used and the periods of time in which she had been an active user. He stated that such minimization is quite common among substance users, and an indication that the individual has not yet reached a "state of recovery." *Id.* at 15-17. The only significant discrepancy he noted was the individual's use of cocaine on April 14, 2002, which she had not reported to the local security office, either on her QNSP or in her 2002 PSI. *Id.* at 14. The results of tests he administered indicated that the individual had not smoked marijuana daily in the past two weeks, had used no other drugs at all in the past two to three days, had no chronic use of alcohol in the past two weeks, and had no liver damage of the type that commonly occurs from excess alcohol consumption. *Id.* at 22-24. The tests did confirm, however, the individual's report that she had hepatitis C, which she believed she had probably contracted from shared needles. *Id.* at 23.

On the basis of the individual's personnel security file, his interview with her, and the test results, the DOE psychiatrist formed an opinion that the individual had suffered from alcohol abuse in the past but not currently, and was currently drinking alcohol habitually to excess. *Id.* at 28. Although she told him that she had cut back on the quantities of alcohol she was currently drinking, and he felt that she was honest in reporting her current consumption, her attempts to control her intake were not sufficient to mitigate her problems with alcohol as of the time of the evaluation. *Id.* at 17-18, 44-45. He determined that she had been intoxicated at least three times since the summer of 2002, and for the two-and-one-half years before that had been intoxicated weekly. *Id.* at 28-29. In order to demonstrate adequate evidence of *rehabilitation*, the DOE psychiatrist stated as guidelines that the individual should complete two years of abstinence from alcohol, including either one year of participation in Alcoholics Anonymous meetings (100 hours, with a sponsor), or 50 hours of participation in a professionally led substance abuse program. *Id.* at 29, 31. In the alternative, the individual could demonstrate adequate evidence of *reformation*, guidelines for which would be two years of absolute sobriety if the individual participated in one of the specified rehabilitation programs, or five years of absolute sobriety if she did not. *Id.* at 30-31. He also stated that he did not inform the individual about these guidelines when they met; he assumed that she would read them when she received his report. *Id.* at 30.

With respect to the individual's use of illegal drugs, the DOE psychiatrist determined, on the basis of the evidence before him, including the test results, that the individual was not currently using illegal drugs habitually to excess. *Id.* at 26.

The Individual's Psychiatrist

A former DOE consultant psychiatrist testified on behalf of the individual. The individual provided him with DOE records the local security office had given her, including the DOE psychiatrist's report. After reviewing those records, he conducted a forensic psychiatric interview ten days before the hearing. *Id.* at 49. He acknowledged that the individual had had a substance-induced disorder with both alcohol and illegal drugs in her past. *Id.* at 50. His testimony focused, however, on the individual's actions since she saw the DOE psychiatrist in December 2002. In 2003 she underwent medical treatment to control her hepatitis C. *Id.* at 51-52. One side effect of the treatment, depression, combined with some advice from her treating physician, convinced her to "really take a hard look at what she was going to do in the future about use of substances." *Id.* at 52. He stated that she wanted to benefit from the treatment as much as possible, and told him that "to continue drinking would be insanity." *Id.* at 54. As a result, the individual entered an outpatient substance abuse program in August 2003 and began attending Alcoholics Anonymous (AA) meetings twice a week in July 2003. He reported that the individual now has a sponsor at AA, her second, and a better match for her than her first. *Id.* at 58. She also attends a Bible study class with other substance users. *Id.* His overall impression of the individual is that she took responsibility upon herself for her substance-induced problem, *id.* at 55, 58, and, in the 21 months since she saw the DOE psychiatrist, has achieved reformation and rehabilitation from that problem. *Id.* at 61.

The Supervisor

The individual's supervisor testified that he has worked with her for over two years, and finds her to be a reliable employee who had no attendance problems on the job. *Id.* at 65, 68, 69. After he responded to all the questions the counsel asked of him, he asked permission to speak on the individual's behalf. After stating that the individual may have made mistakes in her past, he continued:

I see a mother who has realized the values of leading a good life. She has a person that she's living for now, which is her son. I see somebody that's come . . . a long way to improve herself in behalf of the future of her son. [T]he fact now [is] that she doesn't just think for herself. . . . [From] what I gather and the interactions I've had with her, . . . her son is so important in all her decisions, and I say that not because I'm imagining it, but we talk about weekends, and she talks about taking her son here, doing this for her son, . . . the pictures of her with her son. So I don't think that she makes a decision without it somehow being influenced by the

presence of the well-being of her son. . . . I just see somebody whose priorities have changed, and her values.

Id. at 72-73.

The Alcoholics Anonymous Sponsor

The individual's AA sponsor testified that she met the individual around January 2004, when the individual was seeking a sponsor. *Id.* at 77-78, 86. She understood that the individual was not "connecting" with her first sponsor and hoped that a different sponsor would help her move forward through the AA's twelve steps. *Id.* at 81. Offering to sponsor the individual for a 30-day trial period, the sponsor has continued her relationship with the individual since then. *Id.* at 78. She described the individual as a source of inspiration to her. The individual performs service work not just within AA, but also with Habitat for Humanity and with her church. *Id.* at 79. Finally, she stated, "[I]n my heart, and how I see it, is that [the individual] has a great chance of staying sober." *Id.* at 83.

The Individual

At the hearing the individual offered insight into why she failed to report her April 14, 2002 cocaine use on the QNSP she signed shortly after that date and at a security interview conducted six months later. She stated that it was a form of denial, rising from the remorse she felt about the entire evening. *Id.* at 92-93. She testified that she told herself at the time, " 'This just didn't happen. I'm going to act like this didn't happen, it didn't happen to me.' If you lie to yourself long enough, you'll start believing it's the truth." *Id.* at 117. She claimed that she was in a state of denial through the 2002 PSI. By the time of the psychiatric evaluation, however, "it was eating at me. . . . I wanted to bring it up." *Id.* at 117-18.

The individual also recounted how she arrived at her decision to stop drinking. In 1992 she learned that she had contracted hepatitis C, most likely from her drug use. *Id.* at 94-95. At that time, her doctor advised her not to share needles with others so as not to pass the disease to others, but did not advise her to stop drinking or take other precautions. *Id.* at 95. In January 2002 the individual began a treatment for hepatitis C, which has a recommended course of 11 months. *Id.* at 96. She suffered side effects that included depression, loss of appetite, fatigue, hypothyroidism, weight loss and memory loss. *Id.* at 96-100. She discontinued the treatment after seven months. *Id.* at 97. When the doctor started the treatment, he warned her that continued alcohol consumption would negate the benefits of the treatment. She interpreted his warning: "I just know that by taking this treatment, I'm alleviating my liver from this onslaught of damage [due to hepatitis C], and if I continue to drink, I've gone through this treatment for nothing." *Id.* at 103-04. She then explained why she stopped drinking:

I think it's the life-and-death scenario. You know, they say it takes different things for different people to gain a desire to stop. It has to be

inside. You know, I think it wasn't so much dying, you know, like we are all going to do, but it was going without doing the thing I was supposed to do. . . . One of the things I have to persevere in doing is raising [my son] to the best of my ability, and if there [are] some deeds out there that I need to do before—you know, during my lifetime, I want to definitely be doing them. I don't want to depart before I do them.

Id. at 104. As for recreational drugs, she stated, “[W]hat you do when you go through a 12-step process, even though I’m not completely finished, is you restructure yourself, you restructure your soul on a spiritual level. One of the things that I know for sure about me spiritually is that I’m not supposed to be in an altered state of consciousness. . . . I want to be able to feel when the feelings come and not run away from them.” *Id.* at 105-06.

The individual also testified about her rehabilitation efforts. She stated that she had her last drink of alcohol on July 11, 2003, and went to her first AA meeting on July 17, 2003. She testified that she attended AA meetings roughly on a daily basis through October 2003, then roughly three times a week from October 2003 to January 2004. *Id.* at 132. Starting in January 2004, at the suggestion of another AA member, she began documenting her attendance, and produced a contemporaneous record that indicates that she has continued to attend AA meetings roughly three times a week through the date of the hearing. *Id.* at 113; Individual’s Ex. C. In addition, the individual enrolled at a substance abuse treatment center on August 18, 2003. Between that date and April 29, 2004, she completed two 12-session classes that covered such topics as coping with cravings and urges, assertiveness, managing negative moods and depression and enhancing support mechanisms. Tr. at 122-23; Individual’s Exs. D, E. Since January 2004, the individual has also been attending Bible-based study groups for recovering substance users. *Id.* at 114-25, 124.

The DOE Psychiatrist’s Second Appearance

The DOE psychiatrist testified after he had heard the testimony of the individual and the other witnesses. He stated that the testimony at the hearing had allowed him to learn what steps the individual had taken, since his December 2002 evaluation of her, toward rehabilitation and reformation, and to observe and assess the sincerity of her testimony. *Id.* at 135. After expressing his opinion that she had established adequate evidence of rehabilitation and reformation, he explained the basis for his opinion:

I believe she’s sincere and honest and being truthful with us. She doesn’t meet the two-year requirement, but I think she more than makes up for it by her presentation. Also, I didn’t really diagnose her as alcohol dependent. If I had, I probably would have had more trouble being favorable at this time. . . . [I]t was very easy, actually, to say that she was drinking habitually to excess, but she certainly really appears to be involved in the AA program, and I think her sponsor here was very impressive.

Id. at 135-36.

Analysis

A diagnosis of alcohol abuse raises concerns regarding a person's willingness or ability to protect classified information, and drinking alcohol habitually to excess may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. Using illegal drugs likewise increases that risk and at the same time raises concerns regarding a person's willingness to abide by established rules and regulations. Falsifying information provided to the local security office causes additional concerns, because it indicates that the individual may not be trustworthy, and the security program is founded on trust and integrity. The local security office had a substantial basis in the record for raising these concerns. Upon consideration of the evidence presented at the hearing, however, I find that the individual has mitigated all of the concerns in the Notification Letter.

With respect to the substance-related security concerns under Criterion J, I place the greatest weight on the DOE psychiatrist's expert opinion at the hearing that the individual has shown adequate evidence of rehabilitation and reformation, and that she no longer drinks alcohol habitually to excess. The DOE psychiatrist reached his opinion regarding the individual's alcohol-related concerns in spite of the fact that the individual had not met the treatment and abstinence requirements set out in the evaluation report written 21 months before the hearing. He formed his opinion on the basis of the testimony at the hearing, from which he concluded that the individual had made significant changes in her lifestyle and had benefited from her rehabilitation efforts. I note that the individual began her rehabilitation efforts in July 2003, months before she received the Notification Letter, and more than a year before she ever saw the DOE psychiatrist's recommendations for rehabilitation and reformation. *Id.* at 125, 129-31 (received Notification Letter in January 2004, received DOE psychiatrist's report one week before hearing). I am persuaded that personal reasons unrelated to the DOE's security concerns formed the catalyst to bring about her internal "restructuring." This restructuring does not permit the use of alcohol, and her continued participation in AA and other groups for reformed substance users gives her the necessary support to maintain her sobriety. Consequently, the individual has mitigated the local security office's concerns under Criterion J.

The local security office's concerns under Criterion K revolve around a long history of illegal drug use. This behavior appeared to stop in 2000, except for an isolated occurrence of cocaine use on April 14, 2002. The DOE psychiatrist, when faced with this information, determined that the individual did not suffer from drug dependence or abuse, nor was she currently using drugs habitually to excess. Nevertheless, the fact remains that the individual used illegal drugs in the past, and as recently as April 2002. After considering the record before me, particularly the testimony about the forms of treatment she has voluntarily sought, her current pattern of abstinence from alcohol and drugs, and her reasons for dedicating herself to that lifestyle, I find it extremely unlikely that the

individual will resume her use of recreational drugs in the future. The individual has therefore mitigated the local security office's concerns under Criterion K.

The local security office's concerns under Criteria F and L are similar. Certain information from the individual's past tends to show that the individual has not been trustworthy and reliable. She failed to report to the local security office that she used cocaine on April 14, 2002, twice—on a QNSP she signed less than two weeks later and during an interview conducted some six months later. In addition, she had drunk at a bar that same day, though she told the local security office, at the interview six months later, that she had stopped going to bars in 1999. To her credit, however, the individual admitted the details of that evening in December 2002 and January 2003. Other concerns were that she was arrested for Driving While Intoxicated in 1997, and admitted to having driven after drinking alcohol 20 to 30 times in her life; driving after drinking demonstrates poor judgment at the very least. At the hearing, the DOE psychiatrist observed, and I am in agreement, that the individual now behaves in a very straightforward manner. With the benefit of rehabilitative treatment, the individual convincingly testified that her previous unwillingness to own up to the details of that one evening in April 2002 was attributable to remorse and denial. I am convinced that she has progressed in her rehabilitation to the point that remorse and denial no longer control her actions. Nor is she likely at this stage to resort to driving after drinking alcohol, as she no longer drinks alcohol. For these reasons, the individual has mitigated the local security office's concerns under Criteria F and L.

Conclusion

Based on the record in this proceeding, I find that the individual has resolved the security concerns under 10 C.F.R. § 710.8(f), (j), (k) and (l) that the local security office specified in its Notification Letter. For the reasons explained in this decision, I find the individual demonstrated that granting her access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, it is my decision that the individual's access authorization should be granted.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: April 26, 2005